TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 680

ISAAC GROSS AND JOEL GROSS, PARTNERS AS GROSS & GROSS, SOLICITORS FOR COMPLAINANT IN CHANCERY, PETITIONERS,

vs.

IRVING TRUST COMPANY, TRUSTEE CROSBY STORES, INC., BANKRUPT

No. 681

J. S. S. WEISMAN AND JOHN MILTON, RECEIVERS IN CHANCERY OF CROSBY STORES, INC., PETITIONERS,

vs.

IRVING TRUST COMPANY, TRUSTEE CROSBY STORES, INC., BANKRUPT

No. 682

ISAAC GROSS AND JOEL GROSS, PARTNERS AS GROSS & GROSS, AND WILLIAM HARRIS, SOLICITORS FOR RECEIVERS IN CHANCERY, PETITIONERS,

vs.

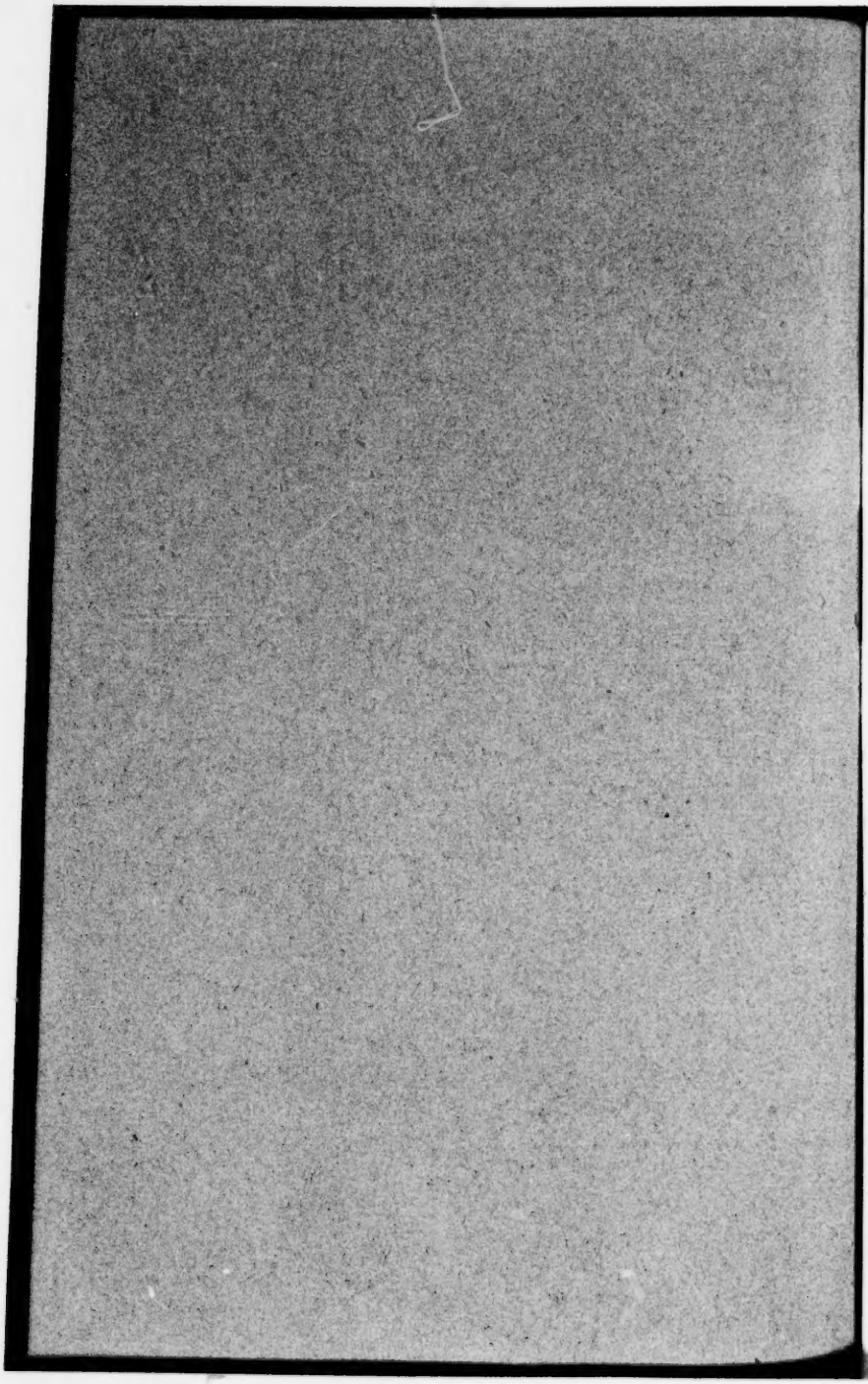
IRVING TRUST COMPANY, TRUSTEE CROSBY STORES, INC., BANKRUPT

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONS FOR CERTIORARI FILED FEBRUARY 10, 1933

CERTIORARI GRANTED MARCH 13, 1933

(37,377, 37,378, 37,379)



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Petition of Trustee for Order Directing Return of Moneys.

(Filed July 1, 1932.)

IN THE

District Court of the United States

FOR THE DISTRICT OF NEW JERSEY.

IN THE MATTER *of* CROSBY STORES, INC., Bankrupt.	In Bankruptcy. Petition.

To the Honorable Judges of the District Court of the United States for the District of New Jersey:

The petition of the undersigned respectfully sets forth:

1. That it is the duly appointed, qualified and acting trustee of the above named bankrupt.

2. That on or about the 13th day of October, A. D. 1931, a bill was filed in the Court of Chancery of New Jersey by the Perfection Garment Co., a corporation, against Crosby Stores, Inc., having for its object the granting of an injunction by the said Court restraining the said Crosby Stores, Inc., from exercising its franchise as a corporation and for the appointment of a receiver pursuant to an Act of the New Jersey Legislature entitled "An Act Concerning Corporations (Revision of 1896)," and the acts supplemental thereto and amendatory thereof.

3. Thereafter on the 13th day of October, A. D. 1931, an order was made appointing Messrs. John Milton and J. S. S. Weisman, receivers for the said Crosby Stores,

Inc., a copy of which order is hereto annexed and made a part hereof, marked Schedule "A."

The said receivers qualified and took possession of the assets and property of the defendant corporation located within the State of New Jersey, which assets consisted of goods and merchandise located in a department store operated by the defendant corporation in Jersey City and Perth Amboy, New Jersey.

4. That on the 14th day of October, A. D. 1931, an involuntary petition in bankruptcy was filed in the United States District Court for the Southern District of New York against the Crosby Stores, Inc., and such proceedings were had on said petition that on the 30th day of October, A. D. 1931, the said Crosby Stores, Inc., was duly adjudicated a bankrupt, and on the 1st day of December, A. D. 1931, said petitioner, Irving Trust Company, was duly appointed trustee of said bankrupt and duly qualified and has ever since been and is now acting as such trustee.

5. That pursuant to an order to show cause made on the 19th day of November, A. D. 1931, by the United States District Court for the Southern District of New York, upon which a hearing was had on the first day of December, A. D. 1931, before the said Court, the said assets and property of said bankrupt as contained in said five stores were sold to Harry B. Cohen for $37,000.00, and on the 7th day of December, A. D. 1931, an order was made approving said sale and directing the transfer of said property to said purchaser, and on the 18th day of December, A. D. 1931, said purchaser did pay to the Irving Trust Company as trustee the said sum of $37,000.00 and did demand proper instruments of transfer so to be placed in possession of the said property so sold to him by your petitioner.

6. That said purchaser was placed in possession of the contents of all of said stores excepting said two stores in New Jersey.

Petition of Trustee for Order Directing Return of Moneys.

7. That in order to enable your petitioner to place said purchaser in possession of said New Jersey stores, your petitioner did procure an order from said District Court of the United States for the Southern District of New York requiring the said John Milton and J. S. S. Weisman, the said receivers appointed by the said New Jersey Court of Chancery, and William Harris and Isaac Gross, the counsel of the said receivers, to show cause before the said Court why they should not be required to turn over the assets and property of said bankrupt in the possession of said receivers, and why they should not be required to account to said Court, which order to show cause having been duly served upon said respondents, said Court made an order, a copy of which is hereto attached and made a part hereof, marked Schedule "B", wherein said respondents were in substance directed forthwith to turn over to your petitioner as trustee in bankruptcy aforesaid, the assets and property of the said bankrupt in their possession or under their control as such receivers, and said counsel were directly to apply to said bankruptcy court for allowances for their services rendered to said receivers, which said last mentioned order was duly served upon said receivers and their counsel.

Notwithstanding the service made of said last mentioned order, the said respondents having failed to obey the same, your petitioner did, on the 18th day of December, A. D. 1931, file its petition in the District Court of the United States for the District of New Jersey and did procure from said Court an order requiring the said John Milton and J. S. S. Weisman, individually and as receivers aforesaid, and William Harris and Isaac Gross, to show cause before said Court on December 31, 1931, why they should not be directed to forthwith turn over to your petitioner, as trustee aforesaid, the property and assets of said bankrupt excepting such moneys as they shall have necessarily expended in and about the preservation of the assets and property of said bankrupt prior to the filing of the invol-

untary petition in bankruptcy against said bankrupt, and restraining the said respondents from taking any proceedings in the said New Jersey Court of Chancery upon a certain order to show cause bearing date the 9th day of December, 1931, a copy of which order to show cause is hereto attached and made a part hereof, marked Schedule "C", which order to show cause was directed to your petitioner as trustee in bankruptcy, and which order to show cause had for its object the making of an order approving the account and report of said receivers and granting of compensation to said receivers and their said counsel.

8. That on the 14th day of December, 1931, your petitioner learned that the said receivers and their said counsel had procured an order from the said Court of Chancery of New Jersey approving the report and account of said receivers and awarding the following fees:

John Milton and J. S. S. Weisman, as receivers jointly	$ 6,000.00
Gross & Gross and William Harris, as solicitors of the receivers jointly besides their taxed costs	4,000.00
Gross & Gross, as solicitors of the complainant	350.00
	$10,350.00

A copy of said order is attached hereto and made a part hereof, marked Schedule "D." Copies of the checks evidencing said payments are annexed hereto and made a part hereof, marked Schedule "E."

9. Pursuant to a petition and order to show cause dated December 18th, 1931, annexed hereto and made a part hereof, marked Schedule "F-I," on the 22nd day of December, A. D. 1931, the said District Court of the United States for the District of New Jersey, made an order, a copy of

which is hereto annexed and made a part hereof, marked Schedule "F," which, in substance, provided that said John Milton and J. S. S. Weisman, individually and as receivers aforesaid, and the said William Harris and Isaac Gross, jointly and severally turn over to your petitioner, as trustee, the property and assets of the bankrupt then or theretofore in their possession, custody or control, excepting such moneys as they shall necessarily have expended in and about the preservation of the assets and property of said bankrupt prior to the date of the filing of the involuntary petition in bankruptcy against said bankrupt, and restraining said persons from interfering with said trustee in the taking of possession of the property of said bankrupt and restraining all of said persons from disposing of any moneys heretofore received by them pursuant to the order of the said Court of Chancery dated December 14th, A. D. 1931, wherein compensation for services alleged to have been rendered was awarded, which said order your petitioner is informed and verily believes was duly served upon said John Milton, J. S. S. Weisman, William Harris and Isaac Gross.

10. Petitioner further alleges that there has not been turned over to your petitioner the moneys belonging to the said bankrupt estate now in the possession of said receivers appointed by the Court of Chancery of New Jersey, which the receivers allege they have paid out to the said receivers and their said counsel in accordance with an order made by the Court of Chancery of the State of New Jersey awarding said sums to the receivers and counsel as compensation for their services.

11. Your petitioner is informed and believes that in the report and account, a copy of which is attached hereto and made a part hereof, marked Schedule "G," filed by said receivers in said Court of Chancery on December 9th, A. D. 1931, it is alleged that there was then in the pos-

session or control of said receivers cash on hand and in banks derived from sales made at said Jersey City, New Jersey, store—$15,628.53, and cash on hand and in bank derived from sales made at said Perth Amboy, New Jersey, store—$3,161.77.

12. Your petitioner is informed and believes that the said receivers filed a final report and account in said Court of Chancery on February 11th, 1932, a copy of which is attached hereto and made a part hereof, marked Schedule "H."

13. That your petitioner's right to have turned over to your petitioner said cash on hand and in banks and to account to your petitioner for the assets and property of said bankrupt estate is disputed by said John Milton, J. S. S. Weisman, William Harris and Isaac Gross.

14. Petitioner further alleges that the payment by said receivers of the sum of $10,350.00 to the receivers and counsel for compensation is utterly null and void and was in violation of the provisions of the Bankruptcy Act of the United States, Revision of 1898 and the amendments supplemental thereto and amendatory thereof, and it was the duty of the said receivers appointed by the Court of Chancery and their counsel to apply to the Bankruptcy Court for compensation for services rendered by them, which may have enured to the benefit of the bankrupt estate.

Wherefore, your petitioner prays that an order may be made requiring John Milton and J. S. S. Weisman individually and as receivers aforesaid, and William Harris and Isaac Gross summarily to turn over to your petitioner the assets of the said bankrupt estate including and not by way of limitation the following sums of money awarded to the receivers and to their counsel by the Court of Chancery of New Jersey as compensation for their services

and to file their account with the United States District Court for the District of New Jersey:

John Milton and J. S. S. Weisman, as receivers jointly	$ 6,000.00
Gross & Gross and William Harris, as solicitors of the receivers jointly, besides their taxed costs	4,000.00
Gross & Gross, as solicitors of the complainant	350.00
	$10,350.00

And that your petitioner may have such other and further relief as may be equitable and just in the premises.

And your petitioner will ever pray, &c.

IRVING TRUST COMPANY,

By JOSEPH T. STEARNS,
Assistant Secretary,
Petitioner.

(Petition was duly verified.)

Schedule "A," Annexed to Petition.

IN CHANCERY OF NEW JERSEY.

Between

PERFECTION GARMENT COMPANY,
a corporation,
Complainant,

and

CROSBY STORES, INC.,
a corporation,
Defendant.

On Bill, &c.
Order Appointing Receiver.

This matter coming on to be heard on an order to show cause made herein on September 3, 1931, and duly continued and brought on for hearing on this day by service of notice provided for in the order of continuance made on October 9, 1931, and it appearing to the Court that the said defendant, Crosby Stores, Inc., is unable to meet its current and maturing obligations out of available funds or by the honest use of its credit, and that it is insolvent within the purview of an Act of the Legislature of the State of New Jersey, entitled: "An Act Concerning Corporations (Revision of 1896)", and the supplements thereto and amendments thereof, and Gross & Gross appearing for and on behalf of the complainant herein, and William Harris and Samuel Roessler on behalf of intervening creditors, and the Court having heard all the arguments presented for and against the granting of the relief prayed for in the bill of complaint, and it appearing to the Court that the relief prayed for should be granted and a receiver of the said defendant corporation appointed for the reasons aforesaid, it is on this 13th day of October, 1931, on motion of Gross & Gross, solicitors and of counsel with complainant.

Schedule "A," Annexed to Petition.

ORDERED, ADJUDGED AND DECREED, that the defendant corporation is unable to meet its current and maturing obligations out of available funds or by the honest use of its credit, and it is insolvent within the purview of an Act of the Legislature of the State of New Jersey, entitled, "An Act Concerning Corporations (Revision of 1896)", and the supplements thereto and amendments thereof; and it is further

ORDERED, that an injunction issue in accordance with the prayers of the bill of complaint herein filed and pursuant to the provisions of an Act of the Legislature of the State of New Jersey, entitled: "An Act Concerning Corporations (Revision of 1896)" and the amendments thereof and supplements thereto; and the said defendant corporation, its officers, agents, servants and employees, be and they are hereby enjoined and restrained from exercising any of the corporate privileges and/or franchises of the said defendant corporation, and from collecting or receiving any debts owing to the said defendant, and from paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to the receiver hereby appointed, and that the defendant corporation, its officers, agents, servants and employees as aforesaid, are hereby ordered and directed to refrain and desist from doing, and from attempting to do, any of the acts above named; and it is further

ORDERED, that John Milton of Jersey City, New Jersey and J. S. S. Weisman of Hoboken, New Jersey, be and are hereby appointed receivers for the said defendant corporation, with the full possession of all of the powers, and charged with the performance of all duties defined and described by law, and especially by an Act of the Legislature of the State of New Jersey, entitled: "An Act Concerning Corporations (Revision of 1896)", and the Amendments thereof and supplements thereto; and it is further

Schedule "A," Annexed to Petition.

ORDERED, that the said receivers, before entering upon their duties as such, do take the oath prescribed by law, and do enter into a bond to the Chancellor of the State of New Jersey, in the sum of Twenty-five thousand Dollars, which bond shall be conditioned for the faithful performance of their duties as such receivers, and shall be approved as to the form and sufficiency of the surety thereby by any of the Special Masters of this Court, and shall be filed with the Clerk of this Court; and it is further

ORDERED, that each and every of the officers, directors, agents, attorneys and employees of the said defendant, Crosby Stores, Inc., and all other persons, be and they hereby are required and commanded forthwith, upon the demand of the said receivers or of his duly authorized agent or representative, to turn over and deliver to the said receivers or to their duly constituted representatives, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, evidences of indebtedness, and any and all other property and records in the possession of the said defendant, or subject to its control; and it is further

ORDERED, that the said defendant, Crosby Stores, Inc., its officers, directors, stockholders, agents, employees, representatives and attorneys, creditors and mortgagees, and each of them, and all other persons claiming to act by, through or under the defendant, and the said defendant, and its officers, directors, stockholders, agents, employees, representatives, attorneys and creditors, be and they and each of them are hereby enjoined and restrained from interfering in any manner with the possession of the receiver, or with their management of any part of the property of the said defendant corporation, or from interfering in any manner with the full and complete discharge of their duties by the said receiver, or from instituting or prosecuting or continuing with the prosecution of any suit, action or proceeding at law, in equity or in bankruptcy against the said

defendant company, or against any property in its possession, or in the possession of the receivers hereby appointed, and from proceeding upon any judgment or execution or other process issued in any suit or proceeding against the said defendant, Crosby Stores, Inc., or against its property, or against the receivers or against property in the possession of the said defendant, or in the possession of the said receivers without leave of this Court first had and obtained; and it is further

ORDERED, that the said receiver and agent are hereby authorized, in their discretion, to continue to manage, operate and conduct the business of the said defendant for a period of thirty days from the date hereof, with full authority to carry on and manage, operate and conduct the said business in their discretion, subject to the supervision of this Court, and to that end to buy and sell merchandise, supplies, equipment, and all things necessary for the proper conduct of the said business, for cash as may be deemed advisable by the said receiver and to hire and employ such employees and other hire as they may deem advisable, to consider and determine which of the contracts, leases or other contractual arrangements between the defendant and any and all other persons or corporations they will renounce or adopt, and to adopt and perform such of said contracts, leases or other contractual arrangements of the said defendant as they may deem desirable or necessary in the conduct of the defendant's business, or in the furtherance of its interests, or in the interests of its stockholders and creditors, but no such contract, lease or other contractual arrangement shall be deemed to have been adopted or ratified by the said receivers except upon written notice by him to that effect.

Respectfully advised,

JNO. J. FALLON,
V. C.

E. R. WALKER,
C.

Schedule "B," Annexed to Petition.

At a Stated Term in Bankruptcy, held at the offices of the Hon. Peter B. Olney, Jr., Referee in Bankruptcy, 19 Rector Street, in the Borough of Manhattan, City of New York, dated the 14th day of December, 1931.

Present:

Hon. Peter B. Olney, Jr.,
Referee in Bankruptcy.

In the Matter
of
Crosby Stores, Inc.,
Bankrupt.

The Irving Trust Company, as Trustee herein, having moved this Court by an order to show cause dated December 11th, 1931, predicated upon its petition duly verified the same day, requiring John Milton and J. S. S. Weissman to show cause why they should not be compelled to forthwith turn over, all and singular, the property in their possession to the Trustee in Bankruptcy, and why they should not be directed to account to this Court as Receivers in Chancery, and why William Harris and Isaac Gross should not be required to make applications for allowances to them for services rendered to the said Receivers in Chancery, and for such other and further order and relief as to the Court may seem just and proper, and the said order to show cause having duly come on to be heard, and after reading and filing the same, and the petition upon which the said order to show cause was predicated, and after hearing Arthur Leonard Ross, Esq., of counsel for the Trustee, in support of said motion, and no one appearing in opposition thereto, and after reading and filing the affidavits of service of Abraham Golub, upon the respondents herein, and due deliberation having been had thereon, it is

Schedule "B," Annexed to Petition.

On motion of Arthur Leonard Ross, Esq., attorney for the trustee herein,

ORDERED that John Milton and J. S. S. Weissman be and they and each of them are hereby authorized and directed to forthwith turn over to the Irving Trust Company, as Trustee herein, all and singular, the property, assets and effects of the bankrupt above named, in their possession or under their control as Receivers in Chancery, and it is further

ORDERED that John Milton and J. S. S. Weissman file their and each of their report and account under oath, as Receivers in Chancery, with the undersigned Referee in Bankruptcy, and it is further

ORDERED that the said William Harris and Isaac Gross be and they are hereby directed to file all applications for allowances to them for services rendered to the Receivers in Chancery, with the undersigned Referee in Bankruptcy; and it is further

ORDERED that John Milton, J. S. S. Weissman, William Harris and Isaac Gross and each of them, their representatives, agents, counsel and attorneys, be and they hereby are jointly and severally enjoined and restrained from proceeding with the order to show cause issued out of the Chancery Court in New Jersey in a certain action wherein the Perfection Garment Co., a corporation, is the complainant, and Crosby Stores, Inc., the bankrupt herein, is the defendant, dated December 9th, 1931, which said order to show cause was directed to the Irving Trust Company, as Trustee herein and from taking any action or proceeding before the said Court of Chancery, in connection with the report and account of the Receivers in Chancery in the said action, and the application for allowances to counsel or any of them.

(Sgd.) PETER B. OLNEY, JR.,
Referee in Bankruptcy.

Schedule "C," Annexed to Petition.

IN CHANCERY OF NEW JERSEY.

Between PERFECTION GARMENT COMPANY, a corporation, Complainant, *and* CROSBY STORES, INC., a corporation, Defendant.	On Bill, &c. Order to Show Cause on Receivers' Petition, Report and Account.

Upon reading and filing the duly verified petition, report and account of John Hilton and J. S. S. Weisman, receivers herein, in which the said receivers pray, amongst other things, that their said report and account may be passed, allowed and approved and allowances made to them for their services as receivers herein, as well as allowances made to Gross & Gross and William Harris, as solicitors and counsel in this matter for services rendered herein, all as set forth and prayed for in said petition, report and account of said receivers, and the said receivers in and by their said petition, report and account further praying the instructions of this court as to the disposition to be made by them of the assets and property in their hands as such receivers, and what indemnity they should obtain for their protection against liabilities incurred by them in the progress of said receivership; and it further appearing to the court in and by said petition, report and account that the said defendant corporation has, since the appointment of the receivers herein, been adjudged bankrupt by the United States District Court for the Southern District of New York, and that the Irving Trust Company has been appointed trustee in bankruptcy of said defendant corporation, and that said trustee is alleged to have sold all of the

assets, including those in the hands of the said receivers herein;

It is on this 9th day of December, 1931, on motion of Gross & Gross, solicitors of said receivers,

Ordered, that the Irving Trust Company, as Trustee in Bankruptcy of the said Crosby Stores, Inc., show cause before the Chancellor, at the Chancery Chambers, in the City of Jersey City, on the 14th day of December, 1931, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why the said report and account of the said receivers herein should not be passed, approved and allowed, and the allowances of the said receivers and of their said counsel and of the solicitors of complainant, for their services rendered herein fixed and determined by this court, and directed to be paid, and what other instructions should be given to the said receivers herein with respect to the matters in said petition, report and account set forth, as therein prayed for, or such other instructions as may be proper; and it is further

Ordered, that a copy of this order and of the petition, report and account of the said receivers, upon which the same is founded (which need not be certified) be served upon said Irving Trust Company, Trustee in Bankruptcy of the said Crosby Stores, Inc., within one day from date hereof, either within or without the State of New Jersey, which shall be deemed good and sufficient service hereof.

Respectfully advised,

Jno. J. Fallon,
V. C.

E. R. Walker,
C.

Schedule "D," Annexed to Petition.

IN CHANCERY OF NEW JERSEY.

Between

PERFECTION GARMENT CO.,
a corporation,
Complainant,

and

CROSBY STORES, INC.,
a corporation,
Defendant.

On Bill, &c.

Order on Receivers' Petition, Report and Account.

This matter coming on to be heard upon an order to show cause made herein on December 9th, 1931, and returnable on this date, in the presence of WILLIAM HARRIS and ISAAC GROSS, of counsel with the receivers; and J. S. S. WEISMAN and JOHN MILTON, the receivers herein; and it appearing to the Court that said order to show cause has been duly served upon Irving Trust Company, as trustee in bankruptcy of said Crosby Stores, Inc., in the manner in said order provided; and no one appearnig on behalf of the Irving Trust Company, as trustee in bankruptcy of Crosby Stores, Inc., objecting to the making of this order; and the Court having examined the petition, report and account of the receiver herein, and no one appearing in opposition to the approval and allowance of the same; and it further appearing to the Court that the said report and account of the receivers should be passed, approved and allowed; and the Court having carefully gone into the services rendered by the receivers and their solicitors aforesaid and being of the opinion that the allowances hereinafter referred to should be made; it is on motion aforesaid, on this 14th day of December, 1931

Schedule "D," Annexed to Petition.

ORDERED, that the receivers' report and account be and the same is hereby passed, approved and allowed and in all things confirmed. And it is further

ORDERED, that there be allowed and paid by the receivers herein, out of the funds in their hands, to said John Milton and J. S. S. Weisman as receivers herein jointly the sum of Six Thousand ($6,000) Dollars, as and for their services as receivers herein. And it is further

ORDERED, that there be allowed and paid to Gross & Gross and William Harris, solicitors of the receivers herein, jointly the sum of $4,000, besides their costs to be taxed. And it is further

ORDERED, that there be allowed and paid to Gross & Gross, solicitors of the complainant, a counsel fee of Three Hundred and Fifty ($350) Dollars, as solicitors of the complainant herein; together with their costs to be taxed.

Respectfully advised,

JOHN J. FALLON,
V. C.

E. R. WALKER,
Chancellor.

Schedule "E," Annexed to Petition.

(Copies of checks. Not necessary to print.)

Schedule "F-1," Annexed to Petition.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

IN THE MATTER *of* CROSBY STORES, INC., Bankrupt.	Petition and Order to Show Cause in Ancillary Proceedings.

Upon the petition of the Irving Trust Company, as trustee in bankruptcy of Crosby Stores, Inc., the bankrupt above named which petition was duly verified the 16th day of December, 1931, and upon all the papers, pleadings and proceedings heretofore had in said matter in the District Court of the United States for the Southern District of New York and in this court on motion of Bilder & Bilder, attorneys of said trustee, it is on this 18th day of December, A. D. 1931,

ORDERED, that John Milton and J. S. S. Weissman, individually and as receivers for the stockholders and creditors of said Crosby Stores, Inc., the said bankrupt, heretofore appointed such receivers by the New Jersey Court of Chancery and William Harris and Isaac Gross show cause before the Judges of this Court at the courtrooms thereof in the Lefcourt-Newark Bldg., #11 Raymond Blvd., in the City of Newark, County of Essex and State of New Jersey on Monday, the 21st day of December, 1931, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard why an order should not be made ordering and directing said John Milton and J. S. S. Weissman individually and as receivers aforesaid to comply with the order of the Hon. Peter B. Olney, Referee in Bankruptcy, dated

Schedule "F-1," Annexed to Petition.

December 14, 1931, made in the above stated matter by said Referee in the District Court of the United States for the Southern District of New York and why they should not be directed forthwith to turn over and deliver to said Irving Trust Company as trustee of said bankrupt all and singular all the property, assets and effects of said bankrupt now and/or heretofore in their or either of their possession, custody or control, excepting such moneys as they shall have necessarily expended in and about the preservation of the assets and property of said bankrupt prior to the date of the filing of the involuntary petition in bankruptcy against said bankrupt and why as to such expended moneys they should not account to said trustee before said Referee in Bankruptcy in said matter in the United States District Court for the Southern District of New York and why they should not be enjoined and restrained from interfering with said trustee in the taking of possession of the said assets and property belonging to said bankrupt estate and why said trustee should not have such other and further relief in the premises as the Court may deem just and proper; and it is further

ORDERED that the said John Milton and J. S. S. Weissman individually and as receivers as aforesaid and William Harris and Isaac Gross and each of them, their agents, servants and attorneys, representatives, counsel and attorneys be and they are hereby jointly and severally enjoined and restrained until the further order of the Court from taking any proceedings upon the order to show cause granted by the New Jersey Court of Chancery in a certain cause wherein the Perfection Garment Co., a corporation, is the complainant and Crosby Stores, Inc., the bankrupt herein, is the defendant, which order to show cause is dated December 9th, 1931, and which order to show cause is directed to the Irving Trust Company as trustee herein and from taking any action or proceeding before said Court of Chancery in connection or relation to the report and

account of said receivers in said suit in said Court of Chancery and the application for allowances to said receivers and to counsel or any of them; and it is further

ORDERED, that the said William Harris and Isaac Gross show cause at the time and place aforesaid why they should not be required to make application for such compensation as they may claim for services rendered to said receivers to said Referee in Bankruptcy in said matter; and it is further

ORDERED that a copy of this order and the annexed petition which need not be certified but which may be certified by the petitioner's solicitors to be true copies be served upon said respondents on or before the 18th day of December, 1931.

GUY L. FAKE,
U. S. D. J.

Schedule "F-1," Annexed to Petition.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

IN THE MATTER
of
CROSBY STORES, INC.,
Bankrupt.

To the Honorable Judges of the United States for the District of New Jersey:

The petition of the IRVING TRUST COMPANY, the Trustee in Bankruptcy, respectfully shows to this Honorable Court and alleges:

FIRST: That on the 1st day of December, 1931, at a meeting of creditors duly held at the offices of the Hon. Peter B. Olney, Jr., Referee in Bankruptcy in and for the Southern District of New York, your petitioner was appointed Trustee in Bankruptcy of the property, assets and effects of the bankrupt above named, and thereafter your petitioner duly qualified as such Trustee in the manner and form prescribed by law.

SECOND: That theretofore and on the 4th day of October, 1931, a petition praying for the involuntary adjudication of the bankrupt above named was duly filed in the office of the Clerk of the United States District Court for the Southern District of New York, and thereafter and on the 30th day of October, 1931, an order adjudging the Crosby Stores, Inc., an involuntary bankrupt within the purview of the National Bankruptcy Act was duly made herein.

Schedule "F-1," Annexed to Petition.

THIRD: Upon information and belief that prior to the filing of the involuntary petition herein and within four months, the Chancery Court of New Jersey in a certain action wherein the Perfection Garment Company, a corporation, was the complainant, and the bankrupt was the defendant, and after a hearing duly held on the said bill in Chancery, and the answer of the defendant was entered, a decree on October 13th, 1931, in accordance with the prayer of the bill of complaint, adjudging the bankrupt to be unable to meet its current and maturing obligations out of available funds or by the honest use of its credit, and that it was insolvent within the purview of an act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations" (Rev. of 1896) and the laws supplemental thereto and amendatory thereof.

FOURTH: Upon information and belief that by a said decree entered on October 13th, 1931, John Milton of Jersey City, N. J. and J. S. S. Weissman of Hoboken, N. J., were appointed receivers of the bankrupt corporation and that the said Milton and Weissman are now acting as such Receivers.

FIFTH: Upon information and belief that the said Receivers have retained William Harris, Esq., of Newark, N. J. and Isaac Gross, Esq., of Jersey City, N. J., as attorneys for the Receivers.

SIXTH: Upon information and belief that the said Receivers continued the business of the bankrupt which was located at Jersey City and Perth Amboy, N. J.

SEVENTH: That the bankrupt operated a chain of five department stores and that the other three are located at Scranton, Pa., Niagara Falls, N. Y. and Pittsfield, Mass.

EIGHTH: That on December 1st, 1931, at a meeting of creditors the assets herein including the two New Jersey

stores were offered for sale pursuant to an order to show cause duly issued out of the United States District Court for the Southern District of New York, dated the 19th day of November, 1931, and that thereafter and on the 7th day of December, 1931, the United States District Court for the Southern District of New York, made an order directing the sale of the bankrupt's assets to one Harry B. Cohen.

NINTH: That thereafter and on the 9th day of December, 1931, on motion of Gross & Gross, solicitors of the said Receivers, said Receivers procured an order to show cause directed to your petitioner as Trustee, why the report and account of the said Receivers in Chancery should not be passed, approved and allowed and the allowances of the said Receivers and of their said counsel and of the solicitors of the complainants for their services rendered, should not be determined by the said Chancery Court and directed to be paid, and what indemnity, if any, your petitioner should be obliged to give for the protection of the Receivers against liabilities incurred by them in the progess of the said Receivership and for other relief.

TENTH: That your petitioner must have immediate possession so as to comply with the order of the United States District Court for the Southern District of New York which authorizes and directs the Trustee to deliver the property to the said Harry B. Cohen. Unless delivery can be made of the said property and the said Chancery Receivers directed to turn over the same, this estate will be seriously damaged.

ELEVENTH: Your petitioner also believes that the said JOHN MILTON and J. S. S. WEISSMAN should be required to account to the Federal Court of their stewardship as Chancery Receivers and that their counsel should be required to apply to the Federal Court for their allowances as such counsel.

Schedule "F-1," Annexed to Petition.

TWELFTH: That thereupon your petitioner applied to the Hon. Peter B. Olney, Jr., Referee in Bankruptcy in charge of this proceeding in the Southern District of New York, for an order to show cause dated December 11th, 1931, requiring the said John Milton, J. S. S. Weissman, William Harris and Isaac Gross to show cause why they should not be required to forthwith turn over, all and singular, the property in their possession to your petitioner as Trustee in Bankruptcy, and why they should not be required to account in the Federal Court and for such other relief, and the said orders to show cause, your petitioner is informed, were duly served upon the said respondents, but on the return day the said respondents did not appear, and the Hon. Peter B. Olney, Jr., Referee in Bankruptcy, made an order granting the said relief; a copy of the said order is hereto annexed and made part of this petition as though fully set forth herein at length, which said order was also duly served on said respondents.

THIRTEENTH: That annexed hereto is a certified copy of the order approving your petitioner's bond as Trustee herein.

FOURTEENTH: That although your petitioner, through its counsel, again demanded that the Chancery Receivers comply with the said order of the Referee, Peter B. Olney, Jr., John Milton, one of the said Chancery Receivers herein, notified your petitioner's counsel that he would not comply with the provisions of the said order of December 14th, 1931, to turn over the property to the Trustee, nor to account to the Federal Court for the reason that Vice Chancellor Fallon directed otherwise.

FIFTEENTH: That your petitioner is unable to consummate the sale made by it pursuant to the order of December 7th, 1931, and your petitioner is in serious danger by reason thereof, and the progress of this estate is being seri-

ously interfered with, delayed, hindered and damaged and the rights and remedies of creditors are being seriously affected. Your petitioner appeals to the Ancillary powers of this Court to aid it in enforcing the orders of the United States District Court for the Southern District of New York.

WHEREFORE, your petitioner prays an order of this Court directing John Milton, J. S. S. Weissman, Isaac Gross and William Harris to show cause why the Receivers in Chancery should not comply with the order of the Hon. Peter B. Olney, Jr., dated December 14, 1931, and why they should not be required to forthwith turn over, all and singular the property of the bankrupt now in their possession or under their control, and why they should not be required to report and account to the Federal Courts, and why the said Receivers should not be enjoined and restrained from interfering with the Irving Trust Company, as Trustee herein, in the exercise of its duties as such Trustee in connection with the property in the State of New Jersey, and for such other and further order and relief in the premises as to this Court may seem just and proper.

Dated, December 16, 1931.

IRVING TRUST COMPANY,
Trustee.

By NEWTON D. ALLING,
Assistant Vice-President,
Petitioner.

(Order approving bond of Trustee annexed.)

Schedule "F," Annexed to Petition.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF NEW JERSEY.

IN THE MATTER *of* CROSBY STORES, INC., Bankrupt.	In Bankruptcy. Order.

This matter being opened to the Court by David H. Bilder and Arthur L. Ross of counsel with Irving Trust Company as trustee in bankruptcy of said bankrupt, and the order to show cause made herein on the 18th day of December, 1931, and returnable on the 21st day of December, 1931, before this Court, having come on regularly to be heard in the presence of said counsel, and it appearing that said order to show cause was duly served, and upon consideration of the petition of the said Irving Trust Company referred to in said order to show cause, and upon all the papers on file in said matter in the District Court of the United States for the Southern District of New York and in this matter, and upon filing exemplified copies of the involuntary petition in bankruptcy filed against the said bankrupt in the District Court of the United States for the Southern District of New York and exemplified copy of the adjudication by said Court wherein it adjudged the said Crosby Stores, Inc., a bankrupt pursuant to the Acts of Congress made in bankruptcy, and exemplified copy of order of said Court approving the bond of the said Irving Trust Company as trustee in bankruptcy of said bankrupt, and it appearing to the Court that an order was duly made by the District Court of the United States for the Southern District of New York in said matter on the 14th day of

Schedule "F," Annexed to Petition.

December, 1931, wherein the said John Milton and J. S. S. Weissman were directed to forthwith turn over to the Irving Trust Company as trustee in bankruptcy of said bankrupt all the assets and property of the said bankrupt in their possession or under their control as receivers in Chancery, and it appearing to the Court that the said John Milton and J. S. S. Weissman, as receivers aforesaid, did receive into their possession, custody and control the assets and property belonging to said bankrupt, and it appearing to the Court that an order was made by said Court of Chancery bearing date the 14th day of December, 1931, granting to the said John Milton and J. S. S. Weissman jointly the sum of Six Thousand Dollars ($6,000.00) as compensation for their services as such receivers and to William Harris and Isaac Gross the sum of Four Thousand Dollars ($4,000.00) jointly, as compensation for their services as solicitors and counsel of said receivers, and to Isaac Gross the sum of Three Hundred Seventy-five Dollars ($375.00) for his services as solicitor for the complainant in the Chancery suit in which said receivers were appointed, and that the said allowances so granted had been paid by the receivers, and that he, the said Harris, had been paid by said receivers since the date of said order of the said Court of Chancery, and it appearing to the Court that adequate demand was made for said property, and it appearing to the Court that it was the duty of said receivers to turn the assets and property of the said bankrupt estate over to said trustee on the 7th day of December, 1931, on which date the bond of said trustee was duly approved by an order of said District Court of the United States for the Southern District of New York made in said matter, and it appearing to the Court that the relief herein prayed for should be granted, it is on this 22nd day of December, 1931, on motion of Bilder & Bilder, attorneys of said trustee

Ordered, that the said order to show cause be and the same is hereby made absolute and the said John Milton and

Schedule "F," Annexed to Petition.

J. S. S. Weissman, individually and as receivers for the stockholders and creditors of said Crosby Stores, Inc., the said bankrupt, heretofore appointed such receivers by the New Jersey Court of Chancery, William Harris and Isaac Gross be and they are hereby jointly and severally ordered and directed to forthwith turn over and deliver to said Irving Trust Company as trustee in bankruptcy of said bankrupt all and singular the property, assets and effects of said bankrupt now and/or heretofore in their or either of their possession, custody or control, excepting such moneys as they shall have necessarily expended in and about the preservation of the assets and property of said bankrupt prior to the date of the filing of the involuntary petition in bankruptcy against said bankrupt, and it is further

ORDERED, that the said John Milton and J. S. S. Weissman, individually and as receivers aforesaid, and the said William Harris and Isaac Gross, their agents, servants and attorneys, be and they are hereby jointly and severally restrained from interfering with said trustee in the taking possession of all assets and property in their and/or any or either of their possession, custody and control belonging to the estate of said bankrupt, and it is further

ORDERED, that the said John Milton and J. S. S. Weissman, William Harris and Isaac Gross be and they are hereby jointly and severally restrained from in any manner disposing of any and all moneys heretofore received by them and/or any of them pursuant to an order made by said Court of Chancery bearing date the 14th day of December, 1931, wherein they were awarded compensation for services alleged to have been rendered by them or any of them referred to in said order.

GUY L. FAKE,
U. S. D. J.

Schedule "G," Annexed to Petition.

IN CHANCERY OF NEW JERSEY.

Between

PERFECTION GARMENT COMPANY, a corporation,
Complainant,

and

CROSBY STORES, INC., a corporation,
Defendant.

On Bill, &c. Petition, Report and Account of Receivers, etc.

To His Honor Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition, report and account of John Milton and J. S. S. Weisman respectfully shows that:

1. They were duly appointed receivers of Crosby Stores, Inc., the above named defendant corporation, and qualified as such receivers and assumed the burdens of their said trust.

2. Of the assets of the said defendant corporation, there have come into the possession of your petitioners as such receivers, two large and extensive department stores theretofore owned and operated by the said defendant corporation, one located at 129 Newark Avenue, Jersey City, N. J., and the other at 99 Smith Street, Perth Amboy, N. J., both of which are located in the principal business centers of their respective communities, and your petitioners, as such receivers, pursuant to the authority vested in them by the order of their appointment, and by order subsequently made herein, continued the conduct of the business of both of said department stores.

Schedule "G," Annexed to Petition.

3. In the conduct of said business it became necessary to purchase large quantities of merchandise, since the merchandise inventory of both of said stores was considerably depleted when your petitioners, as such receivers, took possession, and your petitioners are now obligated to pay for merchandise so purchased by them, as far as your petitioners can now ascertain, the sum of $11,925.31; and your petitioners are likewise alleged to be liable for rent of the Jersey City store; for December, 1931, in the sum of $2,500 plus a proportionate share of taxes on said property; and on the Perth Amboy store, for the rent for the month of December, 1931, the sum of $1,333.33. Your petitioners, as such receivers, are also chargeable for the telephone service for said respective stores, light and power, rent or charge for the conveyor systems therein contained, advertising and other incidental expenses of operation.

4. The receipts by your petitioners as such receivers, in the Jersey City store, to December 1, 1931, including interest on bank balance, are $27,640.09, and the disbursements made by your petitioners therefrom are $12,011.56, thus leaving in the hands of your petitioners, as the net proceeds of the business conducted at said Jersey City store, on December 1, 1931, $15,629.53, all as shown on "Schedule A" hereunto annexed and made part hereof.

5. The receipts by your petitioners as such receivers, in the Perth Amboy store, to December 1, 1931, including interest on bank balance, are $11,760.28, and the disbursements made by your petitioners therefrom are $8,598.51, thus leaving in the hands of your petitioners, as the net proceeds of the business conducted at said Perth Amboy store, on December 1, 1931, $3,161.77, as shown on "Schedule B" hereunto annexed and made part hereof.

6. Prior to the appointment of your petitioners as such receivers, the above named defendant corporation had acquired merchandise from several persons under alleged

agreements of consignment, whereby the title to such merchandise or the proceeds of sale thereof were reserved to the respective consignors, and of the moneys so in hand at the Jersey City store, $2,382.12 represents the proceeds of sale of such alleged consigned merchandise, and of the moneys in hand at the Perth Amboy store, $594.40 represents the proceeds of sale of such alleged consigned merchandise.

7. Since the appointment of your petitioners as such receivers, said defendant Crosby Stores, Inc., was adjudicated bankrupt by the United States District Court for the Southern District of New York, and such proceedings were had therein that said court, on December 3, 1931, purported to sell, together with other assets of the said defendant corporation, both of said stores so in the possession of your petitioners, for the sum of $37,000.00, to include the merchandise so purchased by your petitioners as receivers herein, of which said defendant corporation was not in possession at the time of the filing of the petition in bankruptcy, nor had it at any time title thereto.

8. By orders duly made in this cause, Gross & Gross, and William Harris, Counselors at Law of this State, were appointed and designated as solicitors and of counsel with your petitioners as receivers herein.

9. Said solicitors and counsel have, from the time of the appointment of your petitioners as such receivers, rendered to your petitioners services as such solicitors and counsel and have been in almost daily conference and consultation with your petitioners with respect to the carrying on of the business of said receivership, and with respect to many legal problems and questions arising in connection therewith.

10. An order limiting creditors was made in this cause, which was duly published and served as in said order re-

quired, and a large proportion of the 400 creditors of said defendant corporation have duly filed their claims, all of which required examination and investigation as to their correctness for the purpose of their allowance or disallowance, all of which was done by your petitioners with the aid and assistance of their said solicitors and counsel.

11. In addition to the handling of the moneys by your petitioners as hereinabove set forth, your petitioners as such receivers handled stock of merchandise, furniture and fixtures and other property of the value of approximately $50,000.00.

12. Your petitioners desire the instructions of this court with respect to the further administration of their said trust as such receivers, and whether they should relinquish property and assets in their hands to the Irving Trust Company which has been appointed the trustee in bankruptcy of said defendant corporation by the United States District Court for the Southern District of New York, or to the alleged purchaser of said assets from said trustee in bankruptcy hereinabove referred to, although no demand for said property has as yet been made. Your petitioners, however, believe that demand for said property by said trustee in bankruptcy or by said alleged purchaser will be made in the near future.

13. Your petitioners desire to have fixed, determined and allowed to them and to their solicitors and counsel aforesaid and to solicitors of complainant, a proper fee and allowance for services rendered by them respectively as such, and to be indemnified in a manner to be directed by this court for any liability incurred by them as such receivers.

Wherefore, your petitioners pray that this, their report and account, may be passed and allowed. That their fees as receivers, and the fees of their said respective counsel

as such for services rendered by them respectively herein, be fixed and determined by this court, and directed to be paid out of the moneys in their hands as such receivers herein, and that they may be instructed with respect to the disposition to be made by them of the assets and property of the said defendant corporation remaining in their hands, and of the merchandise purchased by them as receivers herein, and what indemnity, if any, they shall receive upon turning over said property or any of it that they may be directed to turn over, either to said Irving Trust Company, Trustee in Bankruptcy of said defendant corporation, or to the alleged purchaser from said Irving Trust Company as such trustee.

J. S. S. Weisman,
John Milton,
Petitioners.

Schedule "G," Annexed to Petition.

JOHN MILTON & J. S. S. WEISMAN
Receivers for Crosby Stores, Inc.

Jersey City Store — *Schedule A*

RECAPITULATION.

Total Receipts	$27,639.82
Int. on Bank Balance	.27
	$27,640.09
Total Expenditures	12,011.56
CASH ON HAND IN BANKS	$15,628.53
Receivers Mdse. on Hand at Cost., App.	2,000.00
TOTAL RECEIVERS ASSETS	$17,628.53

RECEIVERS LIABILITIES.

For Consigned Mdse. Sold	$ 2,382.12
For Mdse. Purchased	8,832.73
For Operating Expenses	683.62
TOTAL LIABILITIES	$11,898.47

(Full account annexed not necessary to print.)

Schedule "G," Annexed to Petition.

JOHN MILTON & J. S. S. WEISMAN
Receivers for Crosby Stores, Inc.

Perth Amboy Store — *Schedule B*

RECAPITULATION.

Total Receipts	$11,760.28
Total Expenditures	8,598.51
Cash on Hand in Bank	$ 3,161.77
Receivers Mdse. on Hand at Retail	4,882.00
Total Receivers Assets	$ 8,043.77

RECEIVERS LIABILITIES.

For Consigned Mdse. Sold	$ 594.40
For Mdse. Purchased	3,092.58
For Operating Expenses	512.85
Total Liabilities	$ 4,199.83

(Full account annexed not necessary to print. Report and account duly verified.)

Schedule "H," Annexed to Petition.

IN CHANCERY OF NEW JERSEY.

Between

PERFECTION GARMENT COMPANY,
a corporation,
Complainant,

and

CROSBY STORES, INC.,
a corporation,
Defendant.

On Bill, &c.

Petition, Report and Final Account of Receivers, &c.

To his Honor Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition, report and final account of John Milton and J. S. S. Weisman, respectfully shows that:

1. By an order made herein on October 13th, 1931, your petitioners were duly appointed receivers of the above named defendant corporation and have duly qualified and have been acting as such.

2. That of the assets of said defendant corporation which have come to the hands of your petitioners as such receivers, were two certain stores of the said defendant corporation; one located at Perth Amboy, New Jersey, and the other at Jersey City, N. J., the business of which your petitioners were authorized to continue, and your petitioners, pursuant to said authority and the directions of this Court, continued from the date of their appointment as such receivers to conduct the same, and have bought such merchandise as they found necessary to replenish the stock or inventory of said stores, so that the business therein might be continued.

Schedule "H," Annexed to Petition.

3. Your petitioners filed their petition, report and account of the moneys received and disbursed by them on December 9th, 1931, and an order to show cause was made thereon on said last mentioned date, returnable December 14th, 1931, at which said time this Court proceeded to examine into your petitioners' said petition, report and account, and duly passed and allowed the same and made an order to that effect dated December 14th, 1931.

4. That in and by said petition, report and account of your petitioners as such receivers, it is shown that your petitioners had on hand and in banks, cash in the sum of $15,628.53 as the moneys to the credit of the Jersey City store, and the sum of $3,161.77 to the credit of the Perth Amboy store, making in all $18,790.30.

5. That in and by the said petition, report and account of your petitioners as such receivers, it likewise appears that your petitioners were indebted to their creditors for merchandise purchased by them in the conduct of the said Jersey City store in the sum of $8,832.73; for consigned merchandise sold at said store, the sum of $2,382.12, and for operating expenses, the sum of $683.62; and that they were likewise indebted for merchandise purchased by them in the conduct and operation of the Perth Amboy store, in the sum of $3,092.58; and for consigned merchandise sold at said store, the sum of $594.40; and for operating expenses, the sum of $512.85.

6. Said petition, report and account so filed by your petitioners on December 9th, 1931, which were so passed and allowed by the order of this Court made on December 14th, 1931, showed the results of the operations of your petitioners as such receivers up to the close of business on November 30th, 1931.

7. On December 1st, 1930, the trustee in bankruptcy of said defendant Crosby Stores, Inc., sold, and on December 18th, 1930, transferred by bill of sale, the property of said

defendant corporation, located in the State of New Jersey and in other states.

8. From December 1st, 1931 to December 17th, 1931, which was the last day of operation or conduct of business of said stores by your petitioner as such receivers, the receipts by your petitioners as such receivers in the Jersey City store, was $7,148.01, as shown on Schedule A, hereto annexed and made a part hereof.

9. From December 1st, 1931 to December 17th, 1931, which was the last day of operation or conduct of business of said stores by your petitioners as such receivers, the receipts by your petitioners as such receivers in the Perth Amboy store, was $3,379.97, as shown on Schedule B hereto annexed and made part thereof.

10. That annexed hereto and made part hereof as Schedule C is a schedule of itemization of the moneys disbursed by your petitioners as such receivers, out of the moneys to the credit of the Jersey City store, since December 1st, 1931, amounting in all to the sum of $12,860.34.

11. That annexed hereto and made part hereof as Schedule D is a schedule of itemization of the moneys disbursed by your petitioners as such receivers, out of the moneys to the credit of the Perth Amboy store, since December 1st, 1931, amounting in all to the sum of $564.34.

12. That there is shown in your petitioners' previous petition, report and account, receivers' liabilities of the Jersey City store, of $11,898.47, and your petitioners have incurred further liabilities in said Jersey City store, since December 1st, 1931, amounting to $3,342.20, as shown on Schedule E hereunto annexed and made part hereof.

13. That there is shown in your petitioners' previous petition, report and account, receivers' liabilities of the

Schedule "H," Annexed to Petition.

Perth Amboy store, of $4,199.83, and your petitioners have incurred further liabilities in said Perth Amboy store, since December 1st, 1931, amounting to $315.82, as shown on Schedule F hereunto annexed and made part hereof.

14. There is now in the hands of your petitioners in all the sum of $15,920.41.

15. There is likewise owned by your petitioners, as such receivers, a stock of merchandise which was purchased by them as such receivers, in both of said stores, of the cost value of $4,906.82, which said stock of merchandise was taken from their possession by Harry Bachrach, Benjamin Bachrach, Oscar Bachrach and General Department Stores, Inc., concerning which said taking, your petitioners are now proceeding against said parties in this Court, for appropriate relief.

16. There are likewise other items due to your petitioners for refund due for insurance premiums advanced—$691.47, petty cash on hand at Jersey City, $100 and petty cash on hand at Perth Amboy, $60, all as is shown on Schedule F, and your petitioners' total liabilities as far as they are able to ascertain the same, are $19,756.32 for merchandise purchased by your petitioners as such receivers, at both of said stores and otherwise as well as for consigned merchandise sold by them therein, all as appears on Schedule G.

17. That said indebtedness so owing by your petitioners as receivers to their creditors, are past due and should be paid.

18. That your petitioners have heretofore filed petition for instructions fully and completely setting forth all the facts and circumstances concerning the bankruptcy of said Crosby Stores, Inc., the above named defendant corpora-

tion, and your petitioners as such receivers, have received due instructions of this Court with respect to the disposition of their said trust, and otherwise, as prayed by the said petition for instructions, as by the opinion of this Court thereon, and the order of this Court made on February , 1932, thereon, will more fully and at large appear.

Wherefore your petitioners pray that an order may be made herein allowing, passing and approving this, their report and account, and that your petitioners may proceed to carry out and perform the instructions so given to them, pursuant to the terms of said order.

JOHN MILTON,
J. S. S. WEISMAN,
Petitioners.

(Petition duly verified.)

Schedule "H," Annexed to Petition.

JOHN MILTON & J. S. S. WEISMAN,
Receivers—CROSBY STORES, INC.

RECAPITULATION.

Schedule G:

RECEIVERS' ASSETS.

Cash on Hand	$15,920.41
Refund Due for Insurance Premiums Advanced	691.47
Petty Cash on Hand—Jersey City store	100.00
Petty Cash on Hand—Perth Amboy store	60.00

RECEIVERS' LIABILITIES.

Accounts Payable—Jersey City	$12,660.12
Accounts Payable—Perth Amboy	3,919.95
For consigned Mdse. Sold—Jersey City	2,580.55
For consigned Mdse. Sold—Perth Amboy	595.70
Total Receivers' Liabilities	$19,756.32

Liabilities, if any, for rent for use and occupation of Jersey City store and Perth Amboy store, unknown and undetermined.

Order to Show Cause Why Respondents Should Not be Directed to Pay Over Money to Trustee.

(Filed July 1, 1932.)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

IN THE MATTER *of* CROSBY STORES, INC., Bankrupt.	In Bankruptcy. Order to Show Cause.

The Irving Trust Company, trustee in bankruptcy of the above named bankrupt corporation having filed its duly verified petition herein praying that an order be made requiring John Milton and J. S. S. Weisman individually and as receivers appointed by the New Jersey Court of Chancery and William Harris and Isaac Gross summarily to turn over to said Irving Trust Company the assets of the said bankrupt estate and for other relief and good and sufficient reason appearing for the entry of this order, it is on this 1st day of July, 1932, on motion of Bilder & Bilder, attorneys of said trustee

ORDERED that John Milton and J. S. S. Weisman, individually and as receivers appointed by the New Jersey Court of Chancery and William Harris and Isaac Gross show cause before the Judges of this Court on Monday, the 1st day of August, 1932, at 10:30 o'clock in the forenoon (daylight saving time), or as soon thereafter as counsel can be heard at the courtrooms thereof in the Lefcourt-Newark Building, 11 Raymond Blvd., in the City of Newark, County of Essex and State of New Jersey, why an

order should not be made in accordance with the prayers of said petition; and it is further

ORDERED that a copy of this order together with a copy of the petition upon which this order is based be served upon said John Milton, J. S. S. Weisman, William Harris and Isaac Gross within 5 days of the date of this order.

GUY L. FAKE,
U. S. D. J.

STATEMENT.

The parties appeared. The facts stated in petition were conceded to be correct. The case was argued.

Memorandum of Court.

(Filed September 6, 1932.)

Appearances:

MESSRS. BILDER & BILDER (Samuel Kaufman and Arthur Leonard Ross of the New York Bar) for the Trustee;

WILLIAM HARRIS, Esq., Solicitor for Respondent Isaac Gross, Esq., *Pro se.*

FAKE, District Judge.

In the above entitled matter I can see no distinguishing difference between a State Court of Equity and a Federal Court of Equity so far as jurisdiction after bankruptcy is concerned. I will therefore follow the same rule here as is found in *Silberberg* vs. *Ray Chain Stores*, 54 Fed. (2) 650, affirmed 58 Fed. (2) 766, also see *Moore* vs. *Scott*, 55 Fed. (2) 863, and *in re Diamond*, 259 Fed. 70.

The prayers of the trustee's petition should be granted and an order will be signed accordingly.

Order Directing Payment by Respondent Appealed From.

(Filed August 31, 1932.)

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW JERSEY.

IN THE MATTER *of* CROSBY STORES, INC., Bankrupt.	In Bankruptcy. Order.

The trustee in bankruptcy of the above named bankrupt having filed a duly verified petition praying for an order directing J. S. S. Weisman and John Milton, individually and as receivers and William Harris and Isaac Gross to turn over to the said trustee in bankruptcy the assets of the said bankrupt estate including and not by way of limitation the sums of money awarded to the receivers and counsel by the Court of Chancery of New Jersey as compensation for their services as hereinafter set forth and to file their account with the United States District Court for the District of New Jersey and an order having issued thereon requiring the said J. S. S. Weisman and John Milton, individually and as receivers appointed by the New Jersey Court of Chancery and William Harris and Isaac Gross to show cause before the Judges of this Court on Monday the 1st day of August, 1932, at the courtrooms thereof why an order should not be made in accordance with the prayers of said petition and the matter coming on regularly to be heard in the presence of Samuel Kaufman of counsel with the said trustee and William Harris and Isaac Gross of counsel with said receivers and *pro se* and

good and sufficient reason appearing for the entry of this order it is on this 31st day of August, A. D. 1932, on motion of Bilder & Bilder, solicitors of the trustee,

ORDERED that the prayers of the said petition be and the same are hereby granted; and it is further

ORDERED that John Milton and J. S. S. Weisman individually and as receivers turn over to the said trustee in bankruptcy the assets of the bankrupt estate including and not by way of limitation the sum of $6,000.00 paid to the said John Milton and J. S. S. Weisman as receivers jointly; and it is further

ORDERED that Gross & Gross and William Harris turn over to the said trustee in bankruptcy the sum of $4,000 besides their taxed costs being the sums paid to them as solicitors of the said receivers; and it is further

ORDERED that Gross & Gross turn over to the said trustee in bankruptcy in addition thereto the further sum of $350.00 paid to them as solicitors of the complainant in the proceedings pending in the Court of Chancery of New Jersey wherein Perfection Garment Co., a corporation, is complainant, and Crosby Stores, Inc., is defendant; and it is further

ORDERED that the said J. S. S. Weisman and John Milton, receivers, file their accounts with the United States District Court for the District of New Jersey pursuant to the rules of the Court in such case made and provided.

GUY L. FAKE,
U. S. D. J.

Order Modifying Order as to Payments.

(Filed Sept. 15, 1932.)

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

IN THE MATTER *of* CROSBY STORES, INC., Bankrupt.	In Bankruptcy. Order.

This matter being opened to the Court by William Harris, of counsel with the respondents, J. S. S. Weisman and John Milton, individually and as receivers, Isaac Gross and Gross & Gross and William Harris, and upon consent:

It is, on this 15th day of September, 1932, ORDERED that the order of this Court made on the 31st day of August, 1932, be modified by providing that the payments therein directed to be made by the respective respondents to the Trustee in Bankruptcy be made to the Clerk of this Court and that such moneys remain with the Clerk of this Court until this Court shall determine, if application therefor be made, whether the respective respondents are entitled to compensation or any payments out of said fund, and if so, the amount thereof, or until the further order of this Court.

GUY L. FAKE,
Judge of the United States District Court, District of New Jersey.

I hereby consent to the entry of the above order.

BILDER & BILDER,
Of Counsel with Trustee.

Petition of Appeal and Notice of Appeal of Gross, Gross and William Harris, Solicitors of Receivers.

(Filed September 26, 1932.)

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

IN THE MATTER of CROSBY STORES, INC., Bankrupt.	In Bankruptcy. Petition of Appeal and Notice of Appeal of Gross, Gross and William Harris, Solicitors of Receivers.

To the Honorable the Judges of the United States District Court for the District of New Jersey and to Irving Trust Company, Trustee in Bankruptcy of Crosby Stores, Inc.:

Isaac Gross and Joel Gross, partners as Gross and Gross, and William Harris, who were solicitors of J. S. S. Weisman and John Milton receivers of Crosby Stores, Inc., appointed by the Court of Chancery in a cause therein depending wherein Perfection Garment Co. is complainant and Crosby Stores, Inc., is defendant hereby appeal from the judgment, order or decree made herein on the 31st day of August, 1932, as modified by the order of September 15, 1932, by the United States District Court for the District of New Jersey directing the said Isaac Gross and Joel Gross, partners as Gross and Gross, and William Harris to perform certain acts to the United States Circuit Court of Appeals for the Third Circuit, and petition the Judges of the United States District Court, for the District of New Jersey to allow said appeal (although contending that no allowance is necessary) and to direct the record and proceedings to be remitted to the United States Circuit Court of Appeals for the Third Circuit, and tender

their individual bond for the performance of the directions of the said decree, judgment or order if the same shall be affirmed and pray that the operation of the said order shall be stayed pending appeal.

GROSS & GROSS,
Solicitors.

Pro se, and WILLIAM HARRIS.

Dated: September 24th, 1932.

Similar petitions and notices of appeal filed on same date by J. S. S. Weisman and John Milton, individually and as receivers of Crosby Stores, Inc., and by Isaac Gross and Joel Gross, partners as Gross & Gross, solicitors of complainant, Perfection Garment Co. Service of the three petitions and notices of appeal acknowledged September 27th, 1932, by Bilder & Bilder, Esqs., solicitors for Trustee in Bankruptcy.

Order Allowing Appeal and for Stay on Appeal of Gross and Gross and William Harris, Solicitors of Receivers.

(Filed September 26, 1932.)

On motion of Merritt Lane, of counsel with Isaac Gross and Joel Gross, partners as Gross and Gross, and William Harris, who were solicitors of J. S. S. Weisman and John Milton, receivers of Crosby Stores, Inc., appointed by the Court of Chancery of New Jersey, in a cause therein depending wherein Perfection Garment Co. is complainant and Crosby Stores, Inc., is defendant:

It is, on this 26th day of September, 1932, ORDERED that an appeal to the United States Circuit Court of Appeals for the Third Circuit is allowed, and it is ORDERED that a certified transcript of any and all proceedings be forthwith transmitted to the United States Circuit Court of Appeals for the Third Circuit, and the appellants having tendered their individual bond for the performance of such portions of the order, judgment or decree as are by them to be performed:

It is ordered that all proceedings upon such order, judgment or decree be stayed pending the determination of the appeal, the said bond being approved and ordered filed.

GUY L. FAKE,
Judge of the United States District Court,
District of New Jersey.

Similar orders entered on same day on appeal of J. S. S. Weisman and John Milton, individually and as receivers of Crosby Stores, Inc., and on appeal of Isaac Gross and Joel Gross, partners as Gross & Gross, solicitors of complainant, Perfection Garment Co. Service of the three orders acknowledged September 27, 1923, by Bilder & Bilder, Esqs., solicitors for Trustee in Bankruptcy. Citations also duly issued on all three appeals.

Assignment of Errors on Appeal of Gross and Gross, Solicitors for Complainant in Chancery.

Now comes Isaac Gross and Joel Gross, partners as Gross and Gross, who were solicitors of the complainant in a certain cause pending in the Court of Chancery of New Jersey wherein Perfection Garment Co. is complainant and Crosby Stores, Inc., is defendant and says that the order, judgment or decree appealed from is erroneous in this:

1. That the said order, judgment or decree orders appellants to turn over to the trustee in bankruptcy or to the Clerk of the Court the sum of $350 paid to them as solicitors of the complainant in a proceeding pending in the Court of Chancery of New Jersey wherein Perfection Garment Co. is complainant and Crosby Stores, Inc., is defendant.

And appellants assign as error:

1. The United States District Court for the District of New Jersey erred in determining that it had jurisdiction in bankruptcy to order appellants to turn over to it a fee which had been allowed to them by an order of the Court of Chancery of New Jersey made in a receivership proceeding pending in said court in which the Court of Chancery had appointed receivers prior to the filing of bankruptcy proceedings in a cause pending in the Court of Chancery over which that court had jurisdiction under the law and provisions of the statutes of the State of New Jersey, the said court having, under the laws and statutes of the State of New Jersey power to make allowances to the solicitors for the complainant, the procedure under the laws and statutes of the State of New Jersey for the appointment of receivers being in the nature of an equitable *quo warranto* and in the public interest, the complainant acting in effect *pro hac vice* the Attorney General.

Assignment of Errors on Appeal of Gross and Gross, Solicitors for Complainant in Chancery.

2. The United States District Court for the District of New Jersey erred in holding that upon the filing of the petition in bankruptcy the New Jersey Court of Chancery lost title and jurisdiction over the *res*, and thereby lost power to make allowances to the solicitors of the appellants in that cause.

3. The United States District Court for the District of New Jersey erred in not holding that, by the true construction of the bankruptcy act, Congress did not intend that the jurisdiction of the State court, which had taken over possession of the property and assets of the corporation under the law and statutes of the State providing for a procedure equivalent to equitable *quo warranto* should be *ipso facto* deprived of the right to provide for the payment for the services of the officers of the court including the solicitors of the complainant engaged in the administration of the trust.

4. The United States District Court for the District of New Jersey erred in not holding that under constitution of the United States and the system of government of the United States Congress was without power to pass legislation which would take from a State court which had appointed a receiver in proceedings equivalent to equitable *quo warranto*, which receiver had, prior to bankruptcy, taken possession of the assets and property of the corporation under the laws of the State, the power to provide for the payment of services of counsel for the complainant who had brought the cause to the attention of the court and who had aided in the administration of the trust, and who was an officer of the court before surrendering possession of the *res* to a court of the United States in bankruptcy or otherwise.

5. The United States District Court for the District of New Jersey erred in not holding that, as matter of comity, the United States District Court should recognize the orders

of the courts of the State fixing the compensation of the solicitors of the complainant where the receivers were appointed by the State court under the laws of the State prior to the intervention of bankruptcy and such receivers had taken possession of the assets and property of the corporation and the proceedings in the State court were equivalent to an equitable *quo warranto*.

6. The United States District Court for the District of New Jersey erred in not holding that the proper method of procedure was for the trustee in bankruptcy, if it were dissatisfied with the order of the State court fixing the compensation of the solicitors of the complainant in a cause pending in that court to appeal to the appropriate State appellate tribunal and thence to the Supreme Court of the United States.

7. The United States District Court for the District of New Jersey erred in not holding that the trustee in bankruptcy was by its conduct in acquiescing in the administration of the affairs of the Crosby Stores, Inc., after bankruptcy by the receivers appointed by the Court of Chancery of New Jersey and by its other conduct subsequent to bankruptcy, estopped from denying the right of the Court of Chancery to make the orders which it did approving the account of its receivers and allowing compensation to them, and to the solicitors of the complainant in the cause pending in the Court of Chancery of New Jersey which was equivalent to an equitable *quo warranto*.

8. The United States District Court for the District of New Jersey erred in not holding that the Court of Chancery of New Jersey had the power to compensate the solicitors of the complainant in a cause equivalent to an equitable *quo warranto* in which the court had appointed receivers and said receivers had operated the business under the

orders of the court out of the proceeds of the operation of the business.

WHEREFORE, the appellants pray that such order, judgment or decree be reversed and that the District Court of the United States for the District of New Jersey be directed to enter an order denying the application made by the trustee in bankruptcy.

GROSS & GROSS,
Solicitors for Isaac Gross and Joel Gross,
Partners trading as Gross & Gross.

Assignment of Errors on Appeal of Receivers in Chancery.

(Filed Sept. 26, 1932.)

Now comes the said J. S. S. Weisman and John Milton, individually and as receivers of Crosby Stores, Inc., appointed by the Court of Chancery of the State of New Jersey in a cause wherein Perfection Garment Co. is complainant and Crosby Stores, Inc., is defendant and says that the order, judgment or decree appealed from is erroneous in this:

1. That the said order, judgment or decree orders appellants individually and as receivers to turn over to the Trustee in Bankruptcy or to the Clerk of the Court the bankrupt estate including and not by way of limitation the sum of $6,000 paid to the said J. S. S. Weisman and John Milton as receivers jointly.

2. In that said order, judgment or decree orders and directs that the said J. S. S. Weisman and John Milton receivers file their account with the United States District

Court for the District of New Jersey pursuant to the rules of the Court in such case made and provided.

Appellants assign as error:

1. The United States District Court for the District of New Jersey erred in determining that it had jurisdiction in bankruptcy to order and direct appellants as receivers and individually to turn over to the trustee in bankruptcy the fees which had been allowed to them for services rendered as receivers appointed by the Court of Chancery of the State of New Jersey of the bankrupt prior to the filing of bankruptcy proceedings in a cause pending in the Court of Chancery of New Jersey over which that Court had jurisdiction under the law and the provisions of the statutes of the State of New Jersey.

2. The United States District Court for the District of New Jersey erred in determining that it had jurisdiction to compel appellants to file their accounts in the United States District Court for the District of New Jersey as receivers duly appointed by the Court of Chancery of New Jersey of the bankrupt prior to the intervention of the bankruptcy proceedings in a cause over which the Court of Chancery of New Jersey had complete jurisdiction under the law and the provisions of the statutes of the State of New Jersey, their accounts having already been filed and approved by the Court of Chancery of the State of New Jersey, which had full and complete jurisdiction so to do notwithstanding the intervention of the bankruptcy proceedings.

3. The United States District Court for the District of New Jersey erred in holding that upon the filing of the petition in bankruptcy the New Jersey Court of Chancery lost title and jurisdiction over the *res*, and therefore lost power to make allowances to its receivers and to approve its receivers' accounts.

Assignment of Errors on Appeal of Receivers in Chancery.

4. The United States District Court for the District of New Jersey erred in not holding that, by the true construction of the bankruptcy act, Congress did not intend that the jurisdiction of the State Court, which had taken over possession of the property and assets of a corporation under the law and statutes of the State should be *ipso facto* deprived of the right to provide for the payment of the debts incurred by the receivers upon the faith of the orders of the Court to compensate its receivers and to pass upon its receivers' accounts.

5. The United States District Court for the District of New Jersey erred in not holding that under the constitution of the United States and the system of government of the United States Congress was without power to pass legislation which would take from a State Court which had appointed a receiver, which receiver had, prior to bankruptcy, taken possession of the assets and property of the corporation under the laws of the State, the power to provide for the payment of the debts of the receivers incurred upon the faith of the orders of the Court, to compensate its receivers and other officers and to pass upon the accounts of its receivers before surrendering possession of the *res* to a Court of the United States in bankruptcy or otherwise.

6. The United States District Court for the District of New Jersey erred in not holding that as matter of comity the United States District Court should recognize the orders of the Courts of the State fixing the compensation of its receivers where the receivers were appointed by the State Court under the laws of the State prior to the intervention of bankruptcy and such receivers had taken possession of the assets and property of the corporation and the orders of said State Court approving the accounts of its receivers.

Assignment of Errors on Appeal of Receivers in Chancery.

7. The United States District Court for the District of New Jersey erred in not holding that the proper method of procedure was for the trustee in bankruptcy, if it were dissatisfied with the order of the State Court fixing the compensation of receivers and approving the accounts of its receivers to appeal to the appropriate State appellate tribunal and thence to the Supreme Court of the United States.

8. The United States District Court for the District of New Jersey erred in not holding that the trustee in bankruptcy was by its conduct in acquiescing in the administration of the affairs of the Crosby Stores, Inc., after bankruptcy by the receivers appointed by the Court of Chancery of New Jersey and by its other conduct subsequent to bankruptcy, estopped from denying the right of the Court of Chancery to make the orders which it did approving the accounts of its receivers and allowing compensation to them.

9. The United States District Court for the District of New Jersey erred in not holding that the Court of Chancery had the right to approve the accounts of its receivers appertaining to the conduct of the business by such receivers under the orders of the Court of Chancery and to compensate its receivers out of the proceeds of the operation of such business.

10. The United States District Court for the District of New Jersey erred in not holding that prior to the institution of any proceedings against the receivers appointed by the Court of Chancery there should have been an application to the Court of Chancery which had appointed such receivers for leave to sue the receivers.

WHEREFORE, the appellants pray that such order, judgment or decree be reversed and that the District Court of

the United States for the District of New Jersey be directed to enter an order denying the application made by the trustee in bankruptcy.

J. S. S. Weisman.
John Milton.

Gross & Gross,
Solicitors for J. S. S. Weisman and John Milton, Individually and as Receivers of Crosby Stores, Inc.

Bonds in each case properly filed. Citation in each case properly issued, served and filed.

Assignment of Errors on Appeal of Gross and Gross and William Harris, Solicitors for Receivers.

(Filed Sept. 26, 1932.)

Now comes the said Isaac Gross and Joel Gross, partners as Gross and Gross, and William Harris, who were solicitors of J. S. S. Weisman and John Milton, receivers of Crosby Stores, Inc., appointed by the Court of Chancery of the State of New Jersey, in a cause wherein Perfection Garment Co. is complainant and Crosby Stores, Inc., is defendant and says that the order, judgment or decree appealed from is erroneous in this:

1. That the said order, judgment or decree orders appellants to turn over to the trustee in bankruptcy or to the Clerk of the Court the sum of $4,000 besides their taxed costs.

And appellants assign as error:

1. The United States District Court for the District of New Jersey erred in determining that it had jurisdiction

in bankruptcy to order and direct appellants to turn over to the trustee in bankruptcy the moneys allowed to them as compensation and their taxed costs as the solicitors for the receivers appointed by the Court of Chancery of the State of New Jersey of the bankrupt prior to the filing of bankruptcy proceedings in a cause pending in the Court of Chancery of New Jersey over which that Court had jurisdiction under the law and the provisions of the statutes of the State of New Jersey.

2. The United States District Court for the District of New Jersey erred in determining that it had jurisdiction to compel appellants to turn over to the trustee in bankruptcy the amount awarded to them as compensation besides their taxed costs as solicitors of the receivers duly appointed by the Court of Chancery of New Jersey of the bankrupt prior to the intervention of the bankruptcy proceedings in a cause over which the Court of Chancery of New Jersey had complete jurisdiction under the law and the provisions of the statutes of the State of New Jersey, the accounts of such receivers having already been filed and approved by the Court of Chancery of the State of New Jersey, and the allowances having already been made to appellants by the Court of Chancery of the State of New Jersey which had full and complete jurisdiction so to do notwithstanding the intervention of the bankruptcy proceedings.

3. The United States District Court for the District of New Jersey erred in holding that upon the filing of the petition in bankruptcy the New Jersey Court of Chancery lost title and jurisdiction over the *res*, and thereby lost power to make allowances to appellants duly appointed by the Court of Chancery of New Jersey as solicitors of the receivers and officers of that Court in the administration of the trust.

Assignment of Errors on Appeal of Gross and Gross and William Harris, Solicitors for Receivers.

4. The United States District Court for the District of New Jersey erred in not holding that, by the true construction of the bankruptcy act, Congress did not intend that the jurisdiction of the State Court, which had taken over possession of the property and assets of a corporation under the law and statutes of the State should be *ipso facto* deprived of the right to provide for the payment of the debts incurred by the receivers upon the faith of the orders of the Court and to compensate its officers engaged in the administration of the trust including solicitors duly appointed for the receivers and to provide for their expenses, including taxed costs.

5. The United States District Court for the District of New Jersey erred in not holding that under the constitution of the United States and the system of government of the United States Congress was without power to pass legislation which would take from a State court which had appointed a receiver, which receiver had, prior to bankruptcy, taken possession of the assets and property of the corporation under the laws of the State, the power to provide for the payment of the debts of the receivers incurred upon the faith of the orders of the court, to compensate its receivers and other officers including solicitors appointed by the Court to aid in the administration of the trust and to provide for their expenses, including taxed costs, and to pass upon the accounts of its receivers before surrendering possession of the *res* to a court of the United States in bankruptcy or otherwise.

6. The United States District Court for the District of New Jersey erred in not holding that as matter of comity the United States District Court should recognize the orders of the courts of the State fixing the compensation of the solicitors of the receivers duly appointed by the court to aid in the administration of the trust and to pro-

vide for their expenses including taxed costs where the receivers and such solicitors were appointed by the State court under the laws of the State prior to the intervention of bankruptcy and such receivers had taken possession of the assets and property of the corporation.

7. The United States District Court for the District of New Jersey erred in not holding that the proper method of procedure was for the trustee in bankruptcy, if it were dissatisfied with the order of the State court fixing the compensation of the solicitors of the receivers duly appointed by the State court to aid in the administration of the trust and to provide for their compensation including taxed costs, to appeal to the appropriate State appellate tribunal and thence to the Supreme Court of the United States.

8. The United States District Court for the District of New Jersey erred in not holding that the trustee in bankruptcy was by its conduct in acquiescing in the administration of the affairs of the Crosby Stores, Inc., after bankruptcy by the receivers appointed by the Court of Chancery of New Jersey and its other conduct subsequent to bankruptcy, estopped from denying the right of the Court of Chancery to make the orders which it did providing for compensation to the solicitors of the receivers and approving the accounts of its receivers and allowing compensation to them and to their solicitors duly appointed by the Court of Chancery to aid in the administration of the trust and to provide for the payment of their expenses including taxed costs.

9. The United States District Court for the District of New Jersey erred in not holding that the Court of Chancery of New Jersey had the right to approve the accounts of its receivers appertaining to the conduct of the business by such receivers under the orders of the Court of

Assignment of Errors on Appeal of Gross and Gross and William Harris, Solicitors for Receivers.

Chancery and to compensate its receivers and solicitors out of the proceeds of the operation of such business.

10. The United States District Court for the District of New Jersey erred in not holding that prior to the institution of any proceedings against the receivers appointed by the Court of Chancery there should have been an application to the Court of Chancery which had appointed such receivers for leave to sue the receivers and their solicitors.

WHEREFORE, the appellants pray that such order, judgment or decree be reversed and that the District Court of the United States for the District of New Jersey be directed to enter an order denying the application made by the trustee in bankruptcy.

GROSS & GROSS,
Solicitors for Isaac Gross and Joel Gross, partners, as Gross & Gross and for Wm. Harris.

Opinion.

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS,

FOR THE THIRD CIRCUIT.

No. 5009. October Term, 1932.

ISAAC GROSS, *et al.*, as GROSS & GROSS, etc.,
Appellants,

vs.

IRVING TRUST CO., Trustee Crosby Stores, Inc., Bankrupt,
Appellee.

No. 5010. October Term, 1932.

J. S. S. WEISMAN, *et al.*, Revrs. in Chancery Crosby Stores,
Appellants,

vs.

IRVING TRUST CO., Trustee Crosby Stores, Inc.,
Appellee.

No. 5011. October Term, 1932.

ISAAC GROSS, *et al.*, and WM. HARRIS, Solicitors for Revrs.,
Appellants,

vs.

IRVING TRUST CO., Trustee Crosby Stores, Inc., Bankrupt,
Appellee.

And afterwards, to wit, the 12th day of October, 1932, come the parties aforesaid by their counsel aforesaid, and

Minute entry of argument and submission, October 12, 1932, omitted in printing.

In United States Circuit Court of Appeals for the Third Circuit

No. 5009, October Term, 1932

Isaac Gross and Joel Gross, Partners as Gross & Gross, Solicitors for Complainant in Chancery, Appellants,

v.

Irving Trust Co., Trustee Crosby Stores, Inc., Bankrupt, Appellee

No. 5010, October Term, 1932

J. S. S. Weisman and John Milton, Receivers in Chancery of Crosby Stores, Inc., Appellants,

v.

Irving Trust Co., Trustee Crosby Stores, Inc., Bankrupt, Appellee

No. 5011, October Term, 1932

Isaac Gross and Joel Gross, Partners as Gross & Gross, and William Harris, Solicitors for Receivers in Chancery, Appellants,

v.

Irving Trust Co., Trustee Crosby Stores, Inc., Bankrupt, Appellee

Upon Appeals from the District Court of the United States for the District of New Jersey

Before Woolley, Davis, and Thompson, Circuit Judges

Opinion—Filed November 17, 1932

Thompson, Circuit Judge:

These are appeals from an order of the District Court for the District of New Jersey sitting in bankruptcy. The facts are undisputed and are as follows:

Crosby Stores, Inc., operated a chain of stores in New York and New Jersey. A bill of complaint was filed in September, 1931, in the Court of Chancery of New Jersey for the appointment of a receiver for Crosby Stores, Inc., under section 65 of the General Corporation Act of New Jersey, Revision of 1896. On October 13, 1931, the Court of Chancery of New Jersey appointed receivers who took possession of the corporation's assets in New Jersey and continued to operate the two New Jersey stores, buying and selling merchandise and incurring obligations. On October 14, 1931, an involuntary petition in bankruptcy was filed in the District Court for the Southern District of New York against Crosby Stores, Inc., and the Irving Trust Company was appointed receiver in bankruptcy by that court. The corporation was adjudged a bankrupt on October 30, 1931, and on December 1, 1931, the Irving Trust Company was continued in office as trustee in bankruptcy. The trustee sold all of the assets of the bankrupt including the two stores in New Jersey. On December 14, 1931, the Court of Chancery of New Jersey made allowances aggregating $10,350 to its receivers and their counsel. The District Court for the District of New Jersey, upon petition by the trustee in bankruptcy, in a summary proceeding upon a rule to show cause, ordered the state court receivers and their counsel to turn over to the trustee in bankruptcy all of the assets of the bankrupt estate in their possession, together with the allowances paid to them; to file their accounts in the District Court sitting in bankruptcy; and to have their compensation and fees fixed by that court. The state receivers then took this appeal.

The question presented is: Did the Court of Chancery of New Jersey have the power to fix the compensation of its receivers and the fees of their counsel after bankruptcy had intervened within four months of the date of filing the bill of complaint in the state court and the appointment of the receivers by the state court?

A similar question was decided by this court in Silberberg v. Ray Chain Stores, Inc., 58 F. (2d) 766 (certiorari denied October 17, 1932). In that case the District Court for New Jersey sitting in equity appointed receivers who applied to it for compensation. Bankruptcy intervened prior to the petition for compensation. The District Court

sitting in equity denied the petition, holding that after bankruptcy any application for the receivers' compensation and the fees of their counsel should be made to the District Court sitting in bankruptcy. We sustained the District Court, following the decision of the Ninth Circuit in Moore v. Scott, 55 F. (2d) 863. Although in the instant case the disputed jurisdiction is between a state court of chancery and a federal court of bankruptcy, the principle involved is the same as that in the Silberberg case. Congress has vested the jurisdiction in bankruptcy in the federal courts and has made this jurisdiction exclusive in the interests of the insolvent estate and the preservation of the rights of both secured and unsecured creditors. Isaacs v. Hobbs Tie & Timber Co., 282 U. S. 734. Straton v. New, 283 U. S. 318. Applying the rulings of Moore v. Scott, supra, and authorities cited therein, and our own ruling in Silberberg v. Ray Chain Stores, supra, we reach the conclusion that the state court lost jurisdiction to fix the compensation of the receivers and the fees of their counsel after the bankruptcy court acquired jurisdiction. The language of the Supreme Court in Lion Bonding & Surety Co. v. Karatz, 262 U. S. 640, is persuasive. Mr. Justice Brandeis there said:

"Even where the court which appoints a receiver had jurisdiction at the time, but loses it, as upon supervening bankruptcy, the first court cannot thereafter make an allowance for his expenses and compensation. He must apply to the bankruptcy court."

The state receivers contend that recovery of the compensation and fees already allowed could be had by the trustee only in a plenary suit and that the District Court had no jurisdiction in a summary proceeding to order them to account to the trustee. On this point we quote the opinion of the Sixth Circuit in In re Diamond's Estate, 259 Fed. 70, 74:

"The question of ultimate importance is whether or not the petitioner, at the time bankruptcy intervened, was holding the fund in question adversely to the bankrupts or their estate. If so, jurisdiction by summary proceeding was lacking. Louisville Trust Co. v. Comingor, 184 U. S. 18, * * * On the other hand, there was jurisdiction to

compel the surrender of the fund, if not so adversely held. Mueller v. Nugent, 184 U. S. 1, * * * It is well settled that the possession of an assignee for the benefit of creditors is not adverse to the bankrupt or his estate. Bryan v. Bernheimer, 181 U. S. 188, * * *; Mueller v. Nugent, supra, 184 U. S. at page 70, * * *; In re Stewart (C. C. A. 6) 179 Fed. 222, 225, * * *; In re Neuburger, supra. In such case it is held that the adjudication in bankruptcy automatically and of its own force avoids the assignment and terminates the right of possession by the assignee. While the possession of the state court's receiver differed in some respects from that of an assignee for the benefit of creditors, in that the latter holds merely as an agent or representative of the bankrupt himself, yet we think the difference not conclusive. When bankruptcy intervened, the receiver was holding not in his own right, but merely in an official capacity and as the hand of the court, and not, we think, adversely to the bankrupts or their estate, within the meaning of the law. In re Watts & Sachs, supra, 190 U. S. at page 27, * * *; Hooks v. Aldridge (C. C. A. 5) 145 Fed. 865, * * *; In re Hecox (C. C. A. 8) 164 Fed. 823, * * * Had the state court made before bankruptcy an order for compensation, and had disbursement thereunder been made before the commencement of bankruptcy proceedings (as was the case in Louisville Trust Co. v. Comingor, supra), the situation would have been different.

"The fact that petitioner disbursed the $1,175 fund under the state court's order of October 29th did not convert a formerly non-adverse holding into one of an adversary character; for he then knew of the bankruptcy proceedings and of the efforts of the bankruptcy court then and there being made to prevent such action. Bryan v. Bernheimer, supra, 181 U. S. at pages 191 and 193, * * *"

We are in entire accord with the reasoning and conclusions thus expressed.

The order of the District Court is affirmed.

A true copy. Teste:

——— ———, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

In United States Circuit Court of Appeals for the Third Circuit, October Term, 1932

No. 5009

Isaac Gross and Joel Gross, Partners as Gross & Gross, Solicitors for Complainant in Chancery, Appellants,

vs.

Irving Trust Co., Trustee Crosby Stores, Inc., Bankrupt, Appellee

Appeal from the District Court of the United States for the District of New Jersey

Decree—Filed Nov. 17, 1932

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the orders of the said District Court of August 31, 1932, and September 15, 1932, in this cause be, and the same are hereby, affirmed, with costs.

Philadelphia, November 17, 1932.

J. W. Thompson, Circuit Judge.

[File endorsement omitted.]

In United States Circuit Court of Appeals for the Third Circuit, October Term, 1932

No. 5010

J. S. S. Weisman and John Milton, Receivers in Chancery of Crosby Stores, Inc., Appellants,

vs.

Irving Trust Co., Trustee Crosby Stores, Inc., Bankrupt, Appellee

Appeal from the District Court of the United States for the District of New Jersey

Decree—Filed Nov. 17, 1932

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the orders of the said District Court of August 31, 1932, and September 15, 1932, in this cause be, and the same are hereby, affirmed, with costs.

Philadelphia, November 17, 1932.

J. W. Thompson, Circuit Judge.

[File endorsement omitted.]

In United States Circuit Court of Appeals for the Third Circuit, October Term, 1932

No. 5011

Isaac Gross and Joel Gross, Partners as Gross & Gross, and William Harris, Solicitor for Receivers in Chancery, Appellants,

vs.

Irving Trust Co., Trustee Crosby Stores, Inc., Bankrupt, Appellee

Appeal from the District Court of the United States for the District of New Jersey

Decree—Filed Nov. 17, 1932

This cause came on to be heard on the transcript of record from the District Court of the United States for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the orders of the said District Court of August 31, 1932, and September 15, 1932, in this cause be, and the same are hereby, affirmed, with costs.

Philadelphia, November 17, 1932.

J. W. Thompson, Circuit Judge.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1932

No. 680

ORDER ALLOWING CERTIORARI—Filed March 13, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1932

No. 681

ORDER ALLOWING CERTIORARI—Filed March 13, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1932

No. 682

ORDER ALLOWING CERTIORARI—Filed March 13, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File Nos. 37,377, 37,378, 37,379. U. S. Circuit Court of Appeals, Third Circuit. Term No. 680. Isaac Gross and Joel Gross, partners as Gross & Gross, solicitors for complainant in chancery, petitioners, vs. Irving Trust Company, trustee Crosby Stores, Inc., bankrupt. Term No. 681. J. S. S. Weisman and John Milton, receivers in chancery of Crosby Stores, Inc., petitioners, vs. Irving Trust Company, trustee Crosby Stores, Inc., bankrupt. Term No. 682. Isaac Gross and Joel Gross, partners as Gross & Gross, and William Harris, solicitors for receivers in chancery, petitioners, vs. Irving Trust Company, trustee Crosby Stores, Inc., bankrupt. Petition for writs of certiorari and exhibit thereto. Filed February 10, 1933. File Nos. 37,377, 37,378, 37,379.